

EXHIBIT C

ORIGINAL

Members of the Jury:

You have now heard all of the evidence in the case and will hear the final arguments of the lawyers for the parties. It is my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in this case.

In any jury trial there are, in effect, two judges. I am one of the judges; you, the jurors, are the other. It has been my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is now my duty to instruct you on the law applicable to the case.

UNITED STATES DISTRICT COURT
MAR 7 - 2006
at 8 o'clock and 55 min. 9 M
SUE BEITIA, CLERK

CV 03-00385 SOM-LEK
Wayne Berry vs. H1
Express Service, et al

When a corporation is involved, it may act only through persons who are its agents or employees. In general, any agent or employee of a corporation may bind the corporation by his or her acts and declarations made while acting within the scope of the authority delegated to him or her by the corporation, or within the scope of the agent's or employee's duties to the corporation.

I will now instruct you on the substantive law that applies to vicarious infringement.

A person is liable for copyright infringement by another if the person has a financial interest and the right and ability to supervise the infringing activity whether or not the person knew of the infringement.

The Court has already found that the Fleming Employees directly infringed the plaintiff's copyright. You must decide whether Fleming is vicariously liable for the Fleming Employees' infringement. To establish Fleming's liability for vicarious infringement, the plaintiff has the burden of proving both of the following by a preponderance of the evidence:

1. Fleming had a financial interest in and profited from the infringing activity of one or more of the Fleming Employees; and
2. Fleming had the right and ability to supervise or control the infringing activity of the Fleming Employees.

If you find both of these elements are proved, your verdict should be for the plaintiff. On the other hand, if either of these elements was